

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
MUR 7278	)	DISMISSAL AND CASE CLOSURE
McClintock for Congress	)	UNDER THE ENFORCEMENT
David Bauer as treasurer	)	PRIORITY SYSTEM
	)	SYSTEM

## GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Federal Election Commission (the “Commission”) uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), and developments of the law. It is the Commission’s policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances, or to find no reason to believe that the Act was violated. The Office of General Counsel has scored MUR 7278 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.<sup>1</sup>

The Complaint alleges that since 2014, McClintock for Congress and David Bauer, in his official capacity as treasurer (the “Committee”) have incorrectly described the purpose of disbursements to California Disbursement Unit for child support payments made on behalf of a Committee staff member.<sup>2</sup> The Complaint states that the Committee avoids disclosing the staffer’s

<sup>1</sup> The EPS rating information is as follows:  
Oct. 2, 2017.

**Complaint filed: Sept. 22, 2017. Response filed:**

<sup>2</sup> Compl. at 2 (Sept. 22, 2017).

1 total salary by disclosing a portion of it as disbursements for “child support.”<sup>3</sup> Further, the  
2 Complaint alleges that the Committee failed to disclose the type and purpose for a \$254.14  
3 disbursement to the Capitol Hill Club in Washington, D.C. The Committee described the purpose of  
4 the disbursement as “meeting.”<sup>4</sup>

5 The Committee responds that it withholds child support from the staffer pursuant to a court  
6 order, and that it reported the disbursements as instructed by the Commission’s Reports Analysis  
7 Division (“RAD”).<sup>5</sup> The Committee does not address the allegation regarding the \$254.14  
8 disbursement.

9 The Act and the Commission’s regulations require each treasurer of an authorized political  
10 committee to file quarterly reports of receipts and disbursements.<sup>6</sup> Further, political committees are  
11 required to itemize disbursements, including a brief description of each disbursement’s purpose.<sup>7</sup>  
12 The Commission’s *Statement of Policy: “Purpose of Disbursement” Entries for Filings with the*  
13 *Commission* instructs that descriptions, when considered along with the identity of the disbursement  
14 recipient, must be sufficiently specific to make clear the purpose of the disbursement.<sup>8</sup> Further, the  
15 policy includes a non-exhaustive list of sufficient and insufficient “purposes” for disbursements made

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Resp. at 1 (Oct. 2, 2017). RAD has no record of discussions regarding reporting the child support payments, and reports no conversations with the Committee since 2009.

<sup>6</sup> 52 U.S.C. § 30104(a), (b); 11 C.F.R. §§ 104.1, 104.3(a), (b), 104.5(a).

<sup>7</sup> 52 U.S.C. § 30104(b)(4)-(6); 11 C.F.R. § 104.3(b)(3), (4).

<sup>8</sup> Statement of Policy “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007).

1 by political committees, and instructs political committees to contact their Reports Analysis Division  
2 analysts with questions as to how to report the purposes of disbursements.<sup>9</sup>

3 It appears the Committee may have violated the Act and Commission regulations by not  
4 clarifying that the disbursements to the California Disbursement Unit were payroll deductions  
5 pursuant to a child support withholding order, and by not naming the relevant employee. It is not  
6 clear, however, whether the Committee's description of a "meeting" for the purpose of the \$254.14  
7 disbursement, with no further clarification, violates the Act.<sup>10</sup> Given the technical nature of the  
8 alleged violations and in furtherance of the Commission's priorities, relative to other matters pending  
9 on the Enforcement docket, we recommend that the Commission exercise its prosecutorial discretion  
10 and dismiss the allegations that the Committee violated 52 U.S.C. § 30104(b)(4)-(6).<sup>11</sup> We also  
11 recommend that the Commission remind the Committee to include a sufficient purpose when  
12 disclosing disbursements related to wage garnishments in its reports filed with the Commission.

### 13 RECOMMENDATIONS

- 14 1. Dismiss the allegation that McClintock for Congress and David Bauer, in his official  
15 capacity as treasurer, violated 52 U.S.C. § 30104(b)(4)-(6) pursuant to the Commission's  
16 prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985);
- 17 2. Remind the Committee to include a sufficient purpose when disclosing disbursements  
18 related to wage garnishments in its reports filed with the Commission;
- 19 3. Approve the Factual and Legal Analysis;
- 20 4. Approve the appropriate letters; and
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<sup>9</sup> *Id.* at 888.

<sup>10</sup> The policy statement list includes "meeting" as an insufficient purpose when the disbursement is made to an individual. *Id.* In this case, the disbursement was made to a facility, thus, this provision is not directly applicable. In any event, neither the descriptions of the child-support payments nor the payment to the Capitol Hill Club would have resulted in a referral to this office or the Alternative Dispute Resolution Office.

<sup>11</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

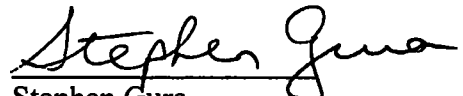
5. Close the file as to all Respondents.


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12.5.17  
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